

Claims 23-31 stand rejected as anticipated under 35 U.S.C. Section 102(b) in view of Japanese Patent Publication No. 8-154589. The rejection is hereby traversed and reconsideration is respectfully requested.

The present application (Serial No. 09/250,834) was filed on February 16, 1999 and claims the benefit of U.S. Patent Application Serial No. 08/806,969 filed February 26, 1997.

Japanese Patent Publication No. 8-154589 was filed on November 30, 1994 in Japan and was published on June 18, 1996. Pursuant to 35 U.S.C. Section 102(b) the Japanese reference is prior art providing the same invention was described therein and the patent document was patented or described in a printed publication in Japan more than one year prior to the date of application for patent in the United States. The effective date of the Japanese reference is its publication date of June 18, 1996. Applicants' priority application was filed within one year of that publication date (i.e. February 26, 1997). The reference is therefore not prior art under Section 102(b).

35 U.S.C. Section 102(a) qualifies the Japanese reference as prior art providing the same invention was patented or described in a printed publication in Japan, before the invention thereof by the Applicant for patent. Again, the critical date is the publication date of the Japanese reference (i.e. June 18, 1996). The earliest effective date of Applicants' priority application is February 26, 1997.

Pursuant to 37 C.F.R. Section 1.131, Applicants may establish by Affidavit or Declaration a prior date of invention within the year of the effective date of the Japanese reference.

Pursuant to 37 C.F.R. Section 1.131(b) the showing of facts to establish an earlier date of invention shall be sufficient in character and weight to establish reduction to practice prior to the effective date of the reference, or conception of the invention prior to the effective date of the reference coupled with due diligence. Original exhibits of drawings or records, or photocopies thereof, must accompany and form part of the Declaration unless otherwise explained.

In order to establish an earlier date of invention and particularly prior to June 18, 1996, Applicants' submit herewith the duly executed Declaration of Mary K. Robinson (a/k/a Mary Katherine Robinson), the first named inventor of the subject matter of the present invention. The Declarant introduces a document entitled, "Invention Record" as Exhibit A to the Declaration which shows the experimental work that was done in connection with the present invention and which refers to specific Notebook pages, copies of which are shown in Exhibit D of the Declaration. The Invention Record describes the use of isomalt (Palatinit) to produce a "crunch" material similar to granulated sugar for a chewing gum referred to as "Burst" gums as well as a process of producing the isomalt in granulated form similar to granulated sugar. The advantages of a crunch material produced in this manner is a stability comparable to granulated sugar (see paragraphs 3-4 of the Declaration).

Paragraph 5 of the Declaration describes the customary procedure at the predecessor owner of the application (Warner-Lambert Company) of recording laboratory experiments and observations in numbered Notebooks which are customarily provided and retained by Warner-Lambert Company personnel for recording laboratory experiments and observations. The pages listed in the Notebook identified in Exhibit A (Lab Notebook No. 16969) include laboratory pages 41-43, 47, 54, 66, 68 and 69 which are signed, witnessed and dated from May 6, 1993 to February 25, 1994.

Paragraph 7 of the Declaration refers to Exhibit B which is a Memorandum prepared by the Declarant for submission to the Warner-Lambert Company Patent Department for consideration of the filing of a patent application. The Memorandum dated July 14, 1994 confirms the preparation of a long lasting/stable crunch material from Palatinit (isomalt) which when incorporated into a gum formulation provides better crunch than granulated sugar. The Memorandum provides a description of the experiments establishing isomalt as a suitable crunch material and confirms the Notebook and Notebook pages which are used to substantiate the actual reduction to practice of the invention prior to June 18, 1996. Beginning with Paragraph 8 of the Declaration, there is provided a detailed explanation of the experiments and the results achieved all confirming effective use of isomalt prepared in accordance with the present invention as a crunching agent for use in chewing

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gum compositions. All of the work performed in connection with these experiments establish reduction to practice of the invention well before June 18, 1996.

It is therefore submitted that the present invention was completed well before June 18, 1996 and therefore, the Japanese Patent document cited in the latest Office Action does not constitute prior art with respect to the present application. Accordingly, the rejection of claims 23-31 under 35 U.S.C. Section 102(b) and the rejection of claims 32-40 under 35 U.S.C. Section 103(a) based at least in part on the Japanese Patent document are improper and should be withdrawn.

Claims 23-27 and 30 stand rejected under 35 U.S.C. Section 102(b) as being anticipated by French Patent No. 2,748,902. Claim 31 stands rejected as obvious under 35 U.S.C. Section 103 in view of the same reference. Claims 32-36, 39 and 40 stand rejected as obvious under 35 U.S.C. Section 103 as being unpatentable over the French reference in view of Forkner. The rejections are hereby traversed and reconsideration is respectfully requested.

Each of the above-identified rejections are principally based on the French Patent reference. The application leading to the French Patent was filed on May 24, 1996 and the application was published on November 28, 1997. The effective date of the French Patent is therefore the publication date of November 28, 1997. As previously indicated, the present application claims priority benefits going back to February 26, 1996 and therefore there is no Section 102(b) prior art basis for the

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French Patent. Applicants have previously shown through the Declaration of Mary K. Robinson, a date of invention which clearly antedates the publication date of the French Patent. Accordingly, the French Patent is not prior art with respect to the present invention under 35 U.S.C. Section 102(a) or any other prior art section. There being no other rejections of the claims, Applicants submit that the present application is in condition for allowance and early passage to issue is therefore deemed proper and is respectfully requested.

It is believed that no fee is due in connection with this matter. However, if any fee is due, it should be charged to Deposit Account No. 23-0510.

Respectfully submitted,



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